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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: Notice of Written Ex Parte Communication, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

In a series of recent *ex parte* filings, the regional Bell operating companies ("RBOCs") have renewed their argument that the availability of the "platform" of unbundled network elements ("UNE-P") saps the incentives of both competitive carriers and incumbent carriers to invest in local networks. Based on this argument, the RBOCs maintain that UNE-P should be eliminated *even when competitive carriers would be impaired without access to unbundled switching*.

For example, Verizon in its October 8, 2002 presentation claims that "recent data confirms that as use of UNE-P increases, CLEC investment decreases." Similarly, in its October 9, 2002 presentation, Qwest claims that "[r]eliance on UNE-P does nothing to promote facilities-based entry." And, most recently, in his October 16, 2002 letter to Chairmen Powell, Verizon General Counsel William Barr asserts that "[t]he ready availability of the incumbent's facilities deters other firms from investing in alternative facilities and technologies."

The asserted basis for these and other similar claims is the white paper entitled *UNE-P and Investment* filed by the RBOCs with their reply comments in this proceeding. That paper purported to conduct an empirical analysis of investment by competitive carriers and establish a "linkage" between such investment and the availability of UNE-P. Overall, the (unnamed) authors of this study develop a series of statistical figures that purport to show that where UNE-P is available, competitive carriers will rely on UNE-P and not invest in their own network facilities.

The attached white paper, *Correcting the RBOCs' Empirical Analyses Of The Linkage Between UNE-P And Investment*, demonstrates that the claims made in the *UNE-P and Investment* paper are in error for two independent reasons. First, the "data" the RBOCs adduce for the purposes of their analysis appear to be made up out of whole cloth to achieve a pre-determined result. But even if these self-prepared data were accurate, the numerical and graphical manipulations that the unnamed RBOC authors apply to these "data" are inconsistent with reasonable analytic and statistical technique. When the RBOCs' specially developed data are replaced by the attested data that the industry has reported to the Commission concerning the extent of local competition, and when appropriate analytical techniques are applied to these data, the RBOCs' conclusions that the availability of UNE-P inhibits competitive investment are shown to be false.

Indeed, as demonstrated in the accompanying white paper, in many instances, the RBOCs' analysis, properly conducted, supports conclusions that are the *opposite* of those reached by the authors of the *UNE-P and Investment* paper. In particular, a properly supported and revised analysis shows:

- UNE-P does not detract from competitive facilities-based line penetration or discourage cable-based telephony;
- UNE-P does not reduce – and may in fact increase – the intensity of competitive switch deployment per access line;
- AT&T's comparison of its experience in New York and California, which shows that the availability of UNE-P did not deter deployment of switches by AT&T, is fully supported; and
- UNE-P does not reduce and may instead increase RBOC investment, a conclusion fully supported by the independent econometric analysis performed by Professor Robert Willig and colleagues and submitted in an ex parte letter dated October 10, 2002.

Consistent with Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceedings.

Sincerely,



Joan Marsh

cc: William Maher
Jeff Carlisle
Michelle Carey
Scott Bergmann
Rich Lerner
Thomas Navin
Robert Tanner
Jeremy Miller